IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

WP(C).No. 24578 of 2007(A)

PETITIONER:

T.N.ASOK KUMAR
PROPRIETOR,
HOTEL ANJALI INTERNATIONAL
PERUMBAVOOR

BY ADV. SRI.P.RAMAKRISHNAN
SRI.A.JAYASANKAR
SRI.MANU GOVIND

RESPONDENTS:

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1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVT.
TAXES DEPARTMENT, SECRETARIAT
TRIVANDRUM

2. THE COMMISSIONER OF EXCISE
TRIVANDRUM

3. THE ASSISTANT EXCISE COMMISSIONER
ERNAKULAM

BY GOVT. PLEADER SRI. P.K. RAVIKRISHNAN.
BY ADV. SRI.K.I.SAGEER-ADV.COMMR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC. 24578/2007.

APPENDIX

PETITIONER'S EXTS:

EXT. P1 : COPY OF ORDER DATED 23.7.2007 ISSUED BY 2ND RESPONDENT.

K.M.JOSEPH, J.

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WP.(C) No.24578 of 2007

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Dated this the 5th day of November, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner has applied for FL3 licence. The Circle Inspector of Excise measured the distance between the proposed bar and Sree Dharmasastha Temple as above 200 meters. But the Assistant Excise Commissioner measured the same distance contrary to Note (2) to Rule 13(3) of Foreign Liquor Rules and found that it is 176 meters. Apparently acting on the basis of the report of the Assistant Excise Commissioner, the Commissioner has rejected the application of the petitioner seeking FL3 licence. Petitioner took out an Advocate Commission. The Advocate Commissioner has filed a report on 6.9.2007. He has inter alia stated as follows:

> "The petitioner's hotel namely Anjali International is a multi storied building having two entrances. One towards north opening to M.C.Road and the other is facing Court Road. The main entrance is opening to M.C.Road. The proposed bar rook is opening to Court Road. I have measured the distance between both the entrances and Sree

> Dharmasastha Temple as provided under the Rules with the assistance of Retired Surveyor.
>
> The distance between the gate of the petitioner's premises facing M.C.Road portion (main entrance portion) to temple gate is 217.2 meters. The other entrance facing Court Road portion to temple gate is 229.9 meters."

Placing reliance on the report, learned counsel for the petitioner submits that Ext.P1 is unsustainable and petitioner is entitled to licence. Note 2 to Rule 13(3) of Foreign Liquor Rules reads as follows:

> "Note : (2) In calculating the distance the basis will be shortest pathway/lane/street/road generally used by the public and the same will be measured from gate to gate."

According to learned counsel for the petitioner the distance is to be measured on the basis of the shortest pathway/lane/street/road generally used by the public and the same will be measured from gate to gate. There is no objection as such filed to the Commission report.

2. I would think that in the light of this report, Ext.P1 is to be quashed and the matter reconsidered and decision taken in accordance with law. In taking a decision the respondents will take note of the Commission report filed in this case.

Accordingly the writ petition is disposed of quashing Ext.P1 and directing the second respondent to consider the application of the petitioner for an FL3 licence and take a decision in accordance with law and taking note of Note(2) to Rule 13(3) and also the Commission report filed in this case within a period of two weeks from the date of receipt of a copy of this judgment.

(K.M. JOSEPH, JUDGE)

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